O F M I C H I G A N

C O U R T O F A P P E A L S

In the Matter of E.W., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

BRUCE E. STRIKER, JR.,

Respondent-Appellant.

UNPUBLISHED
January 10, 2003

No. 235938
Muskegon Circuit Court
Family Division
LC No. 99-027431-NA

In the Matter of J.A.W., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

KEVIN MICHAEL PARSONS,

Respondent-Appellant.

No. 237293
Muskegon Circuit Court
Family Division
LC No. 99-027431-NA

Before: Sawyer, P.J., and Gage and Talbot, JJ.

PER CURIAM.

In these consolidated appeals, respondent Bruce E. Striker appeals by leave granted in Docket No. 235938 from an order terminating his parental rights to the minor child E.W. pursuant to MCL 712A.19b(3)(a), (c)(i), (g), and (j), and respondent Kevin Parsons appeals as of right in Docket No. 237293 from an order terminating his parental rights to the minor child J.A.W. pursuant to MCL 712A.19b(3)(a) and (g). The mother of both children, Merry West, voluntarily released her parental rights and is not a party to either of these appeals. We affirm.

Striker and Parsons do not directly challenge the trial court's finding of clear and convincing evidence supporting termination. Rather, they argue reversal is warranted because: (1) although the trial court held an adjudication with respect to West, it did not hold an adjudication with respect to either Striker or Parsons before proceeding to terminate their parental rights; (2) the trial court committed a due process error by failing to make appropriate findings of fact and conclusions of law on the record in support of jurisdiction over them and, in the case of Parsons, failed to sufficiently state on the record its findings and conclusions regarding termination; and (3) they were denied effective assistance of counsel because their attorney failed to demand that an adjudication for the assertion of jurisdiction be held before proceeding to a termination hearing. Respondent Parsons also raised a fourth issue in his appeal, arguing that the trial court committed error requiring reversal by failing to ensure that notice of all proceedings was provided and by failing to writ Parsons to court for the termination proceedings.

As an initial matter, the trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. Further, considered in its entirety, the evidence did not show that termination was clearly not in the children's best interests. *In re Trejo,* 462 Mich 341, 356-357; 612 NW2d 407 (2000). Striker, whose parental rights to two other children were terminated because of a conviction in another state for indecent liberties with a minor, was currently serving a two- to fifteen-year prison sentence for third-degree criminal sexual conduct involving J.A.W. Parsons, who had been convicted of murder in another state, was serving two life sentences without the possibility of parole. Neither respondent had provided appropriately for his child during his incarceration. Under these circumstances, the trial court did not clearly err in terminating both respondents' parental rights.

Next, because the trial court had already asserted jurisdiction over the children based on West's stipulation to the allegations in the petition for temporary wardship, the court's failure to hold an adjudication of Striker's and Parsons' rights did not bar it from proceeding to terminate their parental rights. *In re CR,* 250 Mich App 185, 202-203, 205; 646 NW2d 506 (2001). Similarly, in terminating their parental rights without first making findings on the record in an adjudication, the trial court did not commit a procedural due process violation warranting reversal. *Id.* Also, the trial court's findings on the record regarding termination of Parsons' parental rights were sufficient to satisfy the requirement of "[b]rief, definite, and pertinent findings and conclusions." MCR 5.974(G)(1); *In re Toler,* 193 Mich App 474, 476-477; 484 NW2d 672 (1992).

Next, with regard to the claims of ineffective assistance of counsel, an attorney is not obligated to advocate a legally meritless position. *In re CR, supra* at 209. Therefore, Striker and Parsons were not denied their right to effective assistance of counsel because their attorney failed to object to the trial court's proceeding to terminate their parental rights without first holding an adjudication of their rights.

Finally, with regard to Parsons' claim regarding lack of notice, because Parsons' whereabouts were apparently unknown at the initiation of the proceedings, the court ordered notice by publication. At the termination hearing, once it became known that defendant was in prison in Texas, the court declined to determine whether Parsons' parental rights should be terminated and ordered written notice be served. Because written notice was served on Parsons

once his whereabouts became known and before the hearing in which the court terminated Parsons' parental rights was held, no error occurred.

At the time of the termination hearing, Parsons was incarcerated in Texas, serving two life sentences for murder.[1] There is no absolute right to be physically present at the dispositional hearing of a proceeding to terminate parental rights in Michigan. *In re Vasquez*, 199 Mich App 44, 49; 501 NW2d 231 (1993). However, due process requires the application of the three-part balancing test established in *Mathews v Eldridge*, 424 US 319, 335; 96 S Ct 893; 47 L Ed 2d 18 (1976) to determine whether a probate court must secure the presence of an incarcerated parent at a termination hearing. *Vasquez*, *supra* at 47-50. That test requires the balancing of the private interest at stake, the incremental risk of an erroneous deprivation in the absence of the procedure demanded, and the government's interest in avoiding the burden the procedure would carry. *Id*. at 47, quoting *In re Brock*, 193 Mich App 652, 660-661; 485 NW2d 110 (1992).

Here, although Parsons' interest in his parental rights was compelling, the risk of erroneous deprivation was not increased by his absence at the hearings. See *Vasquez*, *supra* at 48; cf *In re Render*, 145 Mich App 344; 377 NW2d 421 (1985). Parsons does not deny he was represented by counsel and alleges no facts that would have aided his representation had he been present. Moreover, the financial and administrative burden on the state to bring Parsons from Texas to attend the hearing would have been great. See *Vasquez*, *supra* at 48. There is no evidence that Parsons requested to be present at the hearings. Had Parsons wanted to provide evidence of his fitness, he could have been deposed by telephone or videotape. See *id*. at 49. Under the circumstances, the trial court was not required to secure Parsons' attendance at the termination hearing.

Affirmed.

/s/ David H. Sawyer
/s/ Hilda R. Gage
/s/ Michael J. Talbot

[1] We note that the lower court issued a writ for transport of Parsons for the termination hearing, but for reasons that are unclear from the record, the writ was cancelled.